Murphy 33

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 940

T. P. CANNON, ET AL.,
Petitioners,

vs.

JAMES E. PARKER, ET AL.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT, AND BRIEF THEREON.

J. N. SAYE,
Longview, Texas,
Counsel for Petitioners.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Statement of the matters involved	1
Reasons for granting the writ	6
Prayer for writ	7
Brief in support of petition	9
Opinions below	9
Jurisdiction	9
Statement of the case	10
Specification of errors	10
Summary of argument	10
Point A	11
Point B	13
Point C	16
Conclusion	18

Table of Cases Cited.

Brown v. *Duluth M. & N. Ry. Co.*, 53 Fed. 889	14
Buffalo Pitts Co. v. *Alderdice*, 177 S. W. 1044	13
Cowell v. *City Water Supply Co.*, 121 Fed. 53	12
Elliott v. *Natural Gas Co.*, 4 F. (2d) 493, 497	12
First National Bank v. *Hughes*, 106 U. S. 523	12
Gordon v. *Washington*, 295 U. S. 30, 37	15
Hutchinson Box Board & Paper Co. v. *Van Horn*, 299 Fed. 424, 430	16
Kelleam v. *Maryland Casualty Co.*, 312 U. S. 377	15
Kimberly v. *Arms*, 129 U. S. 512, 523	15
K V O S, Inc., v. *Associated Press*, 299 U. S. 269	12
McNutt v. *General Motors Acceptance Corporation*, 298 U. S. 178	12
Magnolia Provision Co. v. *Coleman*, 3 S. W. (2d) 412, 414	13
Olerich v. *Spain*, 15 Wall. 231	18
Oltmanns Bros. v. *Poland*, 142 S. W. 653	13
Smith v. *Adams*, 130 U. S. 167	12

Page

Schminke Milling Co. v. *Diamond Bros.*, 99 F. (2d) 467 13
Whitaker v. *Whitaker Iron Co.*, 249 Fed. 531 14
Wolfes v. *Paragon Refining Co.*, 74 F. (2d) 193 16

STATUTE CITED

Judicial Code, Sec. 240, 28 U. S. C. A. 347 9

RULES CITED

Supreme Court Rule 38(b) 9
Rule 8, Federal Rules of Civil Procedure 13
Rule 23(b), Federal Rules of Civil Procedure 14
Rule 53(b), Federal Rules of Civil Procedure 15

TEXTBOOKS CITED

13 Am. Jur., p. 514, Sec. 471 16
19 C. J. S., p. 256 16
2 Moore's Federal Practice, p. 2263 14

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 940

T. P. CANNON, ET AL.,
Petitioners,

vs.

JAMES E. PARKER, ET AL.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of T. P. Cannon, T. A. Garnett, Alice M. Roberts, The Pine Petroleum Company, The Pine Pipe Line Company, The Beacon Oil & Refining Company, Unus Oil Corporation, Duo Oil Corporation, Tres Oil Corporation, Octo Oil Corporation, Bromley Oil Company, The Falls Refining Company, and the Delano Oil Company, respectfully show to this Honorable Court:

A

Statement of Matters Involved

1. The first question presented in this case is a challenge to the jurisdiction of the District Court to hear and determine the case; because (a) the complaint shows upon its

face that the matter in controversy does not exceed, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars, and (b) the District Court is without power or authority to grant the relief demanded in the complaint.

2. The second question presented challenges the sufficiency of the complaint to state a claim against the Petitioners.

3. The third question presented is a challenge to the holding of the lower Court that this suit was brought and maintained by Respondents for and on behalf of the ten corporate Petitioners, and that they benefited therefrom.

Respondents brought this suit against the three individuals and the ten corporations who are Petitioners (R. 1). The three individuals owned all of the stock of the corporations, and were their directors and managing officers.

On May 21, 1938, Respondents owned some interest in said corporations, and on that date they sold their interests to Petitioner, T. P. Cannon, for the sum of One Million Six Hundred Thousand ($1,600,000.00) for which his notes were given, payable One Hundred Thousand ($100,000.00) Dollars principal each year and interest monthly at Three Percent (3%). The sale contract was in writing (R. 24-36). Seventy-five percent of the stock of each corporation was endorsed in blank and deposited in a lock box in a bank as security for the notes, with an agreement as to the disposition of the dividends on it, to the general effect that they would be applied first to the payment of all income taxes assessed by any governmental agency by virtue of the ownership of the same; second, ten percent of the balance to Cannon, and third, ninety percent of the balance, so far as needed, to the payment of said notes and the overplus to the purchase of stocks or bonds to be also deposited as

security (R. 24-30). Sections 4 (R. 28) and 10 (R. 33) of the contract provide for acceleration of the maturity dates of the notes and for sale of the securities in case of default in any payment of the indebtedness or any breach of the contract. T. P. Cannon is the only Petitioner who is a party to said contract.

Before this suit was filed, Respondents assigned twenty percent interest in said indebtedness to the Trustees of the "Jimmie & LaWanda Rhea Parker Trust" (R. 131).

At the time this suit was filed, no default had occurred in any payment of said indebtedness, and Respondents did not attempt to accelerate the maturity of said notes (R. 50).

Respondents, designating themselves as Complainants, filed this suit on May 10, 1943, against all of the Petitioners and called them Respondents instead of Defendants (R. 1).

The complaint covers the first twenty-three pages of the record and is replete with repetitions. It first identifies the contract between Respondents and Cannon and makes it a part of the complaint; alleges the sale of twenty percent of the notes therein described to the "Jimmie & LaWanda Rhea Parker Trust" and that the unpaid balance of said indebtedness is $1,100,000.00 of which they own $880,000.00 (R. 2-4). Second, that Petitioners Cannon, Roberts and Garnett own all of the stock of the corporate Petitioners and are their directors and officers (R. 4). Third, that Cannon is the managing officer of said corporations and that the other two officers acquiesced in his management of the same (R. 5). Fourth, that the individual Petitioners entered into a conspiracy to take large sums of money, to which they were not entitled, from the corporations and that Cannon's excessive withdrawals exceeded $500,000.00; Roberts' exceeded $80,000.00 and Garnett's exceeded $40,000.00 (R. 5). Fifth, that Cannon was dissipating and selling the assets of said corporations, and had not applied their dividends in accordance with Paragraph Five of said

contract (R. 6). Paragraphs VIII to XXII (R. 7-21) reiterate in one form or another the alleged wrongful acts of the individual Petitioners. Sixth, that they made verbal request of Cannon and Garnett for certain information, part of which was refused (R. 21). Seventh, that they requested of Cannon the privilege of auditing the books of said corporations, which request was granted; that the audit was not completed until May, 1943 (R. 22). Eighth, that the audit cost them in excess of $15,000.00, which they say should be charged to Cannon and the corporations, as well as a reasonable attorney's fee for investigating and bringing this action (R. 22).

No cause of action is alleged in favor of Respondents against either of the Petitioners, and nowhere is it alleged that the suit is brought in behalf of the corporations, their creditors or anyone other than the Respondents.

The prayer is that "this Honorable Court appoint an Examiner or Master to take testimony for a complete and full accounting and make report thereon, as this Court may see fit and proper, and upon final hearing hereof, these Complainants pray that the corpus of the respective corporations be protected, and if necessary a Receiver be appointed to take charge of and handle the affairs of said Corporations in lieu of the Respondents, T. P. Cannon and other directors, and for such other and further relief, including decree for auditor's fees and attorney fees incurred by Complainants that this Honorable Court may see fit to grant" (R. 23).

Petitioners' challenges to the jurisdiction of the Court and the sufficiency of the complaint were denied (R. 70).

At a hearing on June 29, 1943, the Court found that the parties had previously agreed upon an auditor to audit the books and records of the corporations, that he had not completed his audit, directed him to do so and make report to the Court (R. 47-49).

At a hearing on June 14, 1944, the Court approved the auditor's report and taxed his fees against the Respondents; denied Respondents' application for a receiver to take charge of and operate Petitioners' properties; directed Petitioners to make no further withdrawals from the corporations, above their dividends and salaries, without an order of Court; to make no sales of the corporations' properties, except oil, gas and their by-products, without an order of Court; directed the individual Petitioners to make semi-annual reports to the Court, and continued the cause as to all undetermined issues (R. 68-70).

October 31, 1944, Petitioners filed a cross action against Respondents in which they alleged that a settlement of this litigation had been made by the parties, and, after Petitioners had expended $10,234.04 in carrying out their part of the settlement, Respondents repudiated the agreement and caused the beneficiary and two of the Trustees of the "Jimmie & LaWanda Rhea Parker Trust" to bring suit against Petitioners in the 30th District Court of Wichita County, Texas, in which they sought, *inter alia*, a receiver to take charge of and operate their properties. They prayed, *inter alia*, that Respondents be required to specifically perform the settlement agreement or in the alternative for judgment against them in the sum of $10,234.04 (R. 71-80).

This cross action was heard on December 12, 1944, and the Court found that the aforesaid allegations were true; that to preserve its jurisdiction over the properties of the corporations, it was necessary to appoint a receiver for the same; that T. P. Cannon was a capable and competent person to act as such receiver, and appointed him as operating receiver of said properties. This was done on the Court's own motion (R. 98-101).

On December 26, 1944, the Court authorized the receiver to join each corporation in a loan to them from the Mer-

cantile National Bank in Dallas in the sum of $1,150,000.00, the proceeds of the loan to be used to pay off and discharge the unpaid balance of Cannon's indebtedness to Respondents, and to T. R. Boone and to purchase United States Government bonds and substitute the same for the stock held as security for that part of the indebtedness held by the "Jimmie & LaWanda Rhea Parker Trust" (R. 119-120).

The receiver obtained the loan, applied it as directed and made his final report (R. 121-128), which was approved (R. 135).

The final decree discharged the receiver and directed him to return to the Petitioners their respective properties. It also allowed Respondents an attorney's fee of $3,500.00, charged it against Petitioners' properties and ordered execution against them for its collection. It adjudged that all other relief prayed for by all parties not heretofore granted be denied (R. 135-136). Petitioners appealed to the Circuit Court of Appeals for the Fifth Circuit from that part of the decree which gave judgment against them for said attorney's fee and costs. The Circuit Court of Appeals, in an opinion by Judge Sibley, concurred in by Judge McCord, affirmed the judgment of the District Court (R. 147-152). Judge Waller filed, as said by Judge Sibley, a vigorous dissenting opinion (R. 153-160).

B

Reasons Relied on for Allowance of the Writ

I

The Circuit Court of Appeals has, in this case, in holding that the complaint states a controversy between Petitioners and Respondents in which the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00,

has decided a federal question in a way probably in conflict with applicable decisions of this Court.

II

The Circuit Court of Appeals, in holding that the complaint herein states a claim against the Petitioners upon which relief can be granted, has decided another federal question in a way probably in conflict with applicable decisions of this Court.

III

The Circuit Court of Appeals, in the two rulings set forth under I and II, has sanctioned a departure by the lower Court so far from the accepted and usual course of judicial proceedings, as to call for this Court's power of supervision.

IV

The Circuit Court of Appeals, in affirming the District Court's judgment awarding Respondents an attorney's fee and taxing the same as costs against Petitioners, has also sanctioned a departure by the lower Court so far from the accepted and usual course of judicial proceedings as to call for this Court's power of supervision.

WHEREFORE, your Petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals, Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 11,382, *T. P. Cannon, et al., Appellants* v. *James E. Parker, et al., Appellees,* and that the judgment of the Circuit Court of Appeals may be reversed

by this Honorable Court, and that your Petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your Petitioners will ever pray.

J. N. SAYE,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 940

T. P. CANNON, ET AL.,

Petitioners,

vs.

JAMES E. PARKER, ET AL.,

Respondents.

BRIEF

I

The Opinions of the Court Below

The majority opinion of the Circuit Court of Appeals appears at pages 147-152 of the record. The dissenting opinion appears at pages 153-160 of the record. They are published in 152 F. 2d, 706-713.

II

Jurisdiction

The date of the judgment to be reviewed is December 19, 1945 (R. 160). Petition for Rehearing was denied on January 18, 1946 (R. 164).

This Court has jurisdiction of this application under Section 240 of the Judicial Code, as amended, 28 U. S. C. A. Sec. 347 and Supreme Court Rule 38, Paragraph 5 (b).

III

Statement of the Case

A full statement is set forth in the petition under the heading "Statement of Matters Involved," and in the interest of brevity is not repeated.

IV

Specification of Errors

1. The Circuit Court of Appeals erred in holding that the District Court acquired jurisdiction of respondents' alleged cause of action against petitioners.

2. The Circuit Court of Appeals erred in holding that the complaint herein states a claim against petitioners upon which relief can be granted.

3. The Circuit Court of Appeals erred in holding that respondents brought and prosecuted this suit in behalf of the corporate petitioners.

4. The Circuit Court of Appeals erred in holding that this suit established a liability of $427,472.00 against the individual petitioners in favor of the corporations.

5. The Circuit Court of Appeals erred in holding that this suit "was also the vehicle at last of protecting the assets from a State receivership."

6. The Circuit Court of Appeals erred in holding that the District Court was justified in taxing respondents' attorney's fees against petitioners.

V

Summary of Argument

Point A. The Circuit Court of Appeals has in this case, in holding that the complaint states a controversy between

petitioners and respondents in which the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00, decided a federal question in a way probably in conflict with applicable decisions of this Court; and has sanctioned a departure by the lower court so far from the accepted and usual course of judicial proceedings, as to call for this Court's power of supervision.

Point B. The Circuit Court of Appeals, in holding that the complaint herein states a claim against the petitioners upon which relief can be granted, has decided another federal question in a way probably in conflict with applicable decisions of this Court; and has sanctioned a departure by the lower court so far from the accepted and usual course of judicial proceedings as to call for this Court's power of supervision.

Point C. The Circuit Court of Appeals, in affirming the District Court's judgment awarding respondents an attorney's fee and taxing the same as costs against petitioners, has also sanctioned a departure by the lower court so far from the accepted and usual course of judicial proceedings, as to call for this Court's power of supervision.

Point A

The Federal District Court did not acquire jurisdiction of respondents' alleged cause of action because their complaint, as amended, shows upon its face that the matter in controversy does not exceed, exclusive of interest and costs, the sum or value of $3,000.00.

The complaint does not contain the usual formal allegation that the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00. The amendment to the complaint adds no jurisdictional allegations (R. 49-51).

No contractual relationship existed between respondents and any of the petitioners, except Cannon, and, by the amendment to their complaint, they expressly waived their right to accelerate the maturity of Cannon's notes and to foreclose their lien upon the securities. They asked for nothing from Cannon.

They did not allege that either Garnett or Roberts owed them any money or held any property to which they were entitled, and they demanded no judgment against them. From the 10 corporations, they demanded nothing. For them, they demanded nothing. It is true respondents prayed "for such other and further relief, including decree for auditor's fees and attorney fees incurred by Complainants that this Honorable Court may see fit to grant" (R. 23). But the only fees mentioned in the complaint were the personal obligations of respondents (R. 22). The Circuit Court of Appeals fell into error in considering the prayer for auditor's and attorney's fees as a part of the "matter in controversy," because any such fees as might be allowed by the Court,—there being no contract between the parties for same,—would of necessity be taxed as *costs*. "The sum or value of the matter in dispute, which conditions the jurisdiction of a federal circuit court, is the amount or value of that which the complainant claims to recover, or the amount or value of that which the defendants will lose if the complainant obtains the recovery he seeks." *Cowell* v. *City Water Supply Co.*, 121 F. 53. See *Elliott* v. *Empire Natural Gas Co.*, 4 F. 2d 493, 497; *Smith* v. *Adams*, 130 U. S. 167, 9 S. Ct. 566. As the complaint puts nothing in issue which meets this test it should have been dismissed. *KVOS, Inc.*, v. *Associated Press*, 299 U. S. 269, 57 S. Ct. 197; *McNutt* v. *General Motors Acceptance Corporation*, 298 U. S. 178, 56 S. Ct. 780; *First National Bank* v. *Hughes*, 106 U. S. 523, 1 S. Ct. 489.

Point B

The complaint, as amended, shows upon its face that the respondents have not stated a claim against petitioners upon which the Court would be justified in granting them the relief which they demanded.

Rule 8, Fed. Rules of Civil Procedure, provides that a pleading which sets forth a claim for relief shall contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief to which he deems himself entitled.

In our "statement of the matters involved," we briefly stated the allegations of the complaint, and will not repeat them here.

The complaint probably states a set of facts which would have justified respondents in accelerating the maturity dates of the notes which Cannon executed to them, a suit to reduce them to judgment and a foreclosure of their lien upon the collateral securities; but they elected to waive Cannon's alleged breach of the contract (R. 50).

The respondents and Cannon agreed upon the remedies that should accrue in case of a breach of said contract and the agreed remedies are exclusive. *Buffalo Pitts Co.* v. *Alderdice* (Tex. Civ. Ap., writ of error refused by Texas Supreme Court), 177 S. W. 1044; *Oltmanns Bros.* v. *Poland* (Tex. Civ. Ap., writ of error denied by Texas Supreme Court), 142 S. W. 653, 656; *Magnolia Provision Co.* v. *Coleman* (Tex. Sup. Ct.), 3 S. W. 2d 412, 413; *Schminke Milling Co.* v. *Diamond Bros.*, 99 F. 2d 467.

Respondents do not attempt to state a claim in their own behalf against petitioners, Garnett, Roberts and the 10 corporations, either jointly or severally.

The majority opinion of the Circuit Court of Appeals after stating that "It is not clearly true that the suit was

not in behalf of the corporations, as separate legal entities, as well as in behalf of plaintiffs," held that the suit was in behalf of the corporations; but this holding is not supported by sufficient props.

The complaint contains no allegation that it is brought in behalf of the corporations and no relief is demanded for the corporations.

The allegations of the complaint (and the amendment does not strengthen it, R. 49-50) do not meet the requirements of Rule 23 (b) Fed. Rules of Civil Procedure, as a "secondary action by shareholders." The rule requires that "the complaint shall be verified by oath and shall aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law." The complaint here contains no such allegation. On the other hand the complaint alleges that 75% of the stock of said corporations was placed in a lock box in a bank, pursuant to a contract dated May 21, 1938, between Cannon and respondents and that it has remained there since about June 1, 1938 (R. 2). Said contract is attached to the complaint as a part of it. According to it, said stock was endorsed in *blank* and then placed in said lock box (R. 26). The respondents could not open the box or remove any of its contents without the express consent of Cannon (R. 27). If Cannon defaulted in his obligations, respondents still could not get control of the stock without following the methods of foreclosure provided in paragraphs 4 (R. 28) and 10 (R. 33) of the contract. Thus, the complaint and its exhibit show that respondents are not shareholders of the corporations, waived their right to acquire the legal title to the stock, and are not qualified to maintain an action in behalf of the corporations. *Whitaker* v. *Whitaker Iron Co.*, 249 F. 531, Cert. denied 248 U. S. 564; *Brown* v. *Duluth M. & N. Ry. Co.*, 53 F. 889; Vol. 2, *Moore's Fed. Practice*, p. 2263.

Respondents' prayer (R. 23) is in fact a mere request of the court that it act as a sort of F. B. I. Agency to investigate the affairs of petitioners, and, if the investigation justified it, appoint a receiver to take charge of petitioners' properties and operate them for an indefinite period of time.

Rule 53 (b), Fed. Rules of Civil Procedure, cautions the district courts that "a reference to a master shall be the exception and not the rule." And this Court has said that "A master in chancery is an officer appointed by the court to assist it in various proceedings incidental to the progress of a cause before it." *Kimberly* v. *Arms,* 129 U. S. 512, 523, 9 S. Ct. 355, 359. A master, like a receiver, is the means to reach an end, and not the end.

The conditional prayer for a receiver does not help respondents' complaint. We quote this Court: "A receivership is only a means to reach some legitimate end sought through the exercise of the power of a court of equity. It is not an end in itself. Where a final decree involving the disposition of property is appropriately asked, the Court in its discretion may appoint a receiver to preserve and protect the property pending its final disposition." • • • "But there is no occasion for a court of equity to appoint a receiver of property of which it is asked to make no further disposition." *Gordon* v. *Washington,* 295 U. S. 30, 37, 55 S. Ct. 584, 588. To the same effect, *Kelleam* v. *Maryland Casualty Co.,* 312 U. S. 377, 61 S. Ct. 595.

Point C

The results of this litigation are stated in our statement of the matters involved and will not be repeated. Judge Waller's dissenting opinion pretty well analyzes the accomplishments of the respondents and cites many authorities which support his opinion and our contention (R. 153-160).

The authorities hold that before a stockholder is entitled to reimbursement for his cost and expenses incurred in his suit against the officers of a corporation in behalf of the corporation he must prevail in the suit and preserve, protect or increase the assets of the corporation. 13 Am. Jur., p. 514, Sec. 471; 19 C. J. S., p. 256; *Hutchinson Box Board & Paper Co.* v. *Van Horn,* 299 F. 424, 430; *Wolfes* v. *Paragon Refining Co.,* 74 F. 2d 193.

The respondents recovered nothing for the corporations in this suit. The final result to the corporations was that they, with the District Court's approval, to avoid further harassment, embarrassment and interference with their business operations by respondents' litigation, purchased 50.44% of their stock which was pledged to secure Cannon's original notes to respondents and a loan to T. A. Garnett from T. R. Boone, paying for the same by assuming the unpaid balance of said indebtedness. The corporations, also with the court's approval, borrowed $1,150,000.00 from a bank to consummate the deal, gave a deed of trust upon their properties and pledged their stock to the bank to secure the loan. $720,000.00 of the loan went to respondents to pay the unpaid balance of their notes; $9,000.00 paid T. R. Boone his unpaid balance; and $198,000.00 purchased United States bonds which were substituted as collateral to the notes held by Jimmie & LaWanda Rhea Parker Trust (R. 128) (R. 103-127). So the corporations, as a result of this suit, had their indebtedness increased $1,150,000.00 and

their properties, theretofore unencumbered, mortgaged to secure the same.

The majority opinion says that the suit established a liability to the corporations from their officers of $427,472 (R. 151), but the statement is not correct. The trial court found that the three stockholders had withdrawn from the corporations, in excess of their salaries, expenses and dividends, the sum of $427,473.80 (R. 133). But the court did not find that they were liable to the corporations for said sum. The record indicates that the corporations owed no debts, and that their combined surpluses amounted to $552,-363.02 (R. 134). The corporations held these surpluses for the three stockholders. The trial court also found that the main defendant Cannon was a capable and competent person to act as receiver for said corporations (R. 100); that the value of the stock owned by Cannon in said corporations exceeded $1,500,000.00 (R. 132); that the value of the assets of said corporations, when this case was tried, exceeded $3,000,000.00; and that their value at that time was greater than it was when Cannon took over their management in May, 1938 (R. 134).

The majority opinion states that this suit was the vehicle which protected the corporations' assets from a State receivership (R. 151). Our statement of the matters involved shows that this statement is an error. When the respondents failed to get possession of these corporations in the federal court, one of them, as one of the trustees of the Jimmie & LaWanda Parker Trust, his co-trustee and the beneficiary, brought a suit in a state court in which they sought a receiver for the petitioners' properties, and it was petitioners' cross action herein that blocked that suit,—not the respondents' complaint. (See dissenting opinion, R. 157-159).

The allowance of the attorney's fee herein to respondents and assessing it as costs against petitioners is condemned

by this Court as against "sound public policy" in *Oelrich* v. *Spain*, 15 Wall. 231, 21 L. Ed. 32.

Conclusion

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the petitioners may have the relief which was denied by the lower courts and that to such an end a writ of certiorari should be granted and this Court should review the decisions of the lower courts and finally reverse them.

Respectfully submitted,

J. N. SAYE,
Counsel for Petitioners.

(3378)